

APPEAL NO. 032109
FILED OCTOBER 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 8, 2003. The hearing officer determined that the appellant (claimant's attorney) is entitled to attorney fees for Sequence Number 4 in the amount of zero dollars. The claimant's attorney requests reversal, asserting a lack of notice and opportunity to respond. No response was filed.

DECISION

Reversed and remanded.

The hearing officer erred in determining that the claimant's attorney is entitled to attorney fees for Sequence Number 4 in the amount of zero dollars. The record reflects that the claimant's attorney failed to appear at the hearing below. The hearing officer therefore, found that the claimant's attorney did not meet his burden of proof and was not entitled to the requested attorney's fees. We have said that a hearing officer does not have authority to preclude a nonattending party from presenting evidence, "after a single failure to appear." Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997. Rather, the established procedure requires that the hearing officer "affirmatively set" a new hearing date or give the nonattending party 10 days to request that the hearing be reconvened, to consider whether good cause exists for the party's failure to appear at the original hearing, and for the presentation of evidence on the certified issue(s). See Texas Workers' Compensation Commission Appeal No. 960464, decided April 22, 1996. Should a party fail to appear for the next hearing, after adequate notice has been given, the hearing officer could then issue a decision. See Texas Workers' Compensation Commission Appeal No. 991155, decided July 15, 1999. In accordance with our precedent, we reverse the hearing officer's decision and remand for further proceedings. On remand, the hearing officer should schedule another CCH, order the attorney to attend, afford him the opportunity to show good cause for not attending the original CCH, take evidence on the attorney's fee issue, and enter a decision on the merits of that issue.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78578.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge